

AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1951**

**Introduced by Assembly Member Vargas**

February 14, 2002

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An act to amend ~~Section~~ *Sections 11018.9 and 11024* of the Business and Professions Code, and to amend Sections 1689.5 and 1689.24 of the Civil Code, relating to home solicitations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1951, as amended, Vargas. Home solicitation contracts: timeshare projects.

(1) Existing law regulates the content and effect of home solicitation contracts or offers, as defined, and seminar sales solicitation contracts or offers, as defined. Existing law defines goods and services for the purposes of these provisions, excepting from these definitions specified items and activities.

This bill would except from the definition of home solicitation contract or offer and seminar sales solicitation contract or offer, and from their respective definitions of goods and services, a contract or offer to purchase a timeshare estate or a timeshare use in a timeshare project, as defined, *if certain conditions apply, as specified*, and any goods or services that are offered as part of, or incidental to, a timeshare estate or a timeshare use in a timeshare project, including, an exchange program or incidental benefit, as defined, *if certain conditions apply, as specified*.

(2) Existing law provides that a person who has made an offer to purchase a timeshare estate or timeshare use in a timeshare project, as

defined, has the right to rescind a contract resulting from the acceptance of the offer until midnight of the 3rd calendar day, as specified.

This bill would provide that a person has the right to rescind the above described contract until midnight of the 7th calendar day, as specified. This bill would also require that the offer to purchase the timeshare estate or timeshare use include the date the purchaser executes the offer to purchase, as specified, and a statement regarding the right to rescind, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 11018.9 of the Business and Professions*  
2 *Code is amended to read:*

3 11018.9. (a) Notwithstanding anything to the contrary  
4 contained in subdivision (g) of Section 11004.5, Section 11018,  
5 and subdivisions (d) and (e) of Section 11018.5, an incidental  
6 benefit is not a part of the offering, and except as provided in this  
7 section ~~shall~~ and in Section 11024, is not ~~be~~ subject to the  
8 provisions of this part ~~nor~~ or to regulations of the commissioner  
9 adopted pursuant thereto.

10 (b) If a purchaser of an interest in a time-share project is offered  
11 the opportunity to acquire an incidental benefit in connection with  
12 a time-share interest, the subdivider shall include with the  
13 application for a public report a description of each incidental  
14 benefit, including the nature and amount of any user fees or costs  
15 associated therewith, and, any restrictions upon use or availability.

16 (c) Incidental benefits may only be offered if:

17 (1) The continued availability of any incidental benefit for the  
18 use and enjoyment of owners of time-share interests is not  
19 necessary in order for any accommodation or facility which is not  
20 an incidental benefit to be used, occupied, or enjoyed by the  
21 owners in a manner consistent in all material respects with the plan  
22 of use and enjoyment set forth in the time-share documents or  
23 represented by or on behalf of the subdivider, in writing in a  
24 purchaser's purchase contract, in the permit, or in any  
25 advertisement or promotion, or otherwise.

26 (2) The use of or participation in the incidental benefit by an  
27 owner of a time-share interest is completely voluntary, and

1 payment of any fee or other cost associated with the incidental  
2 benefit is required only upon that use or participation.

3 (3) No costs of acquisition, operation, maintenance, or repair  
4 of the incidental benefit are passed on to purchasers of time-share  
5 interests in the time-share project as common expenses of the  
6 time-share project.

7 (d) The commissioner may issue a disclosure statement  
8 relating to any incidental benefits. A copy of the disclosure  
9 statement of the commissioner, when issued, shall be given to the  
10 prospective purchaser by the owner, subdivider, or agent prior to  
11 the execution of a binding contract or agreement for the sale of any  
12 interest in the time-share project.

13 SEC. 2. Section 11024 of the Business and Professions Code  
14 is amended to read:

15 11024. (a) A person who has made an offer to purchase a  
16 timeshare estate or timeshare use in a timeshare project, as defined  
17 in Section 11003.5, *or any incidental benefit made concurrently*  
18 *with or within seven calendar days after the offer*, shall have the  
19 right to rescind any contract resulting from the acceptance of the  
20 offer until midnight of the seventh calendar day following the day  
21 on which the prospective purchaser executed the offer to purchase.  
22 *The notice shall be in writing and shall be effective upon deposit,*  
23 *first-class postage prepaid, into the United States mail. The owner*  
24 *of a subdivision shall cause any deposit or deposits given by a*  
25 *purchaser who has exercised the right to rescind described in this*  
26 *section, to be returned to the purchaser not later than 10 business*  
27 *days following receipt of the purchaser's written notice of*  
28 *rescission, or five business days following the date upon which the*  
29 *deposit or deposits become good with the funds immediately*  
30 *available therefor, whichever occurs later.*

31 (b) The owner of a subdivision, as defined in subdivision (e) of  
32 Section 11004.5, or his or her agent, shall, in accordance with  
33 regulations adopted by the Real Estate Commissioner, clearly and  
34 conspicuously disclose to all prospective purchasers of timeshare  
35 interests the right of rescission provided for in subdivision (a), and  
36 shall furnish to each offeror a form, as prescribed by regulations  
37 of the commissioner, for the exercise of the right of rescission. The  
38 offer to purchase described in subdivision (a) shall include the date  
39 the purchaser executes the offer to purchase, and shall contain, in  
40 immediate proximity to the space reserved for the signature of the

1 purchaser, a conspicuous ~~statement in capitalized letters in a type~~  
2 ~~size at least equal to the predominant type size of the contract~~  
3 *statement in a size equal to at least 10-point bold type*, as follows:  
4 “YOU, THE BUYER, MAY CANCEL THIS TRANSACTION  
5 AT ANY TIME PRIOR TO MIDNIGHT OF THE SEVENTH  
6 CALENDAR DAY AFTER THE DATE OF THIS  
7 TRANSACTION. SEE THE NOTICE OF CANCELLATION  
8 FORM ATTACHED TO THE FRONT PAGE OF THE  
9 CALIFORNIA PUBLIC REPORT ~~ISSUED BY THE REAL~~  
10 ~~ESTATE COMMISSIONER FOR AN~~ *FOR AN* EXPLANATION  
11 OF THIS RIGHT.”

12 (c) Any certificate bearing the signature of the purchaser of a  
13 timeshare estate or timeshare use in a timeshare project, as defined  
14 in Section 11003.5, which contains an adequate description of the  
15 interests sold and a statement by the purchaser that he or she has  
16 not exercised the right of rescission within the time limit set forth  
17 herein shall constitute conclusive evidence that the right of  
18 rescission has not been exercised in any matter involving the rights  
19 of a third party who has acted in good faith in reliance upon  
20 representations in the certificate. ~~This~~ *No part of this* subdivision  
21 may ~~not~~ be construed to allow a purchaser to waive his or her right  
22 of rescission before the expiration of the time set forth in subdivision  
23 (a).

24 (d) A purchaser may bring an action for recovery of actual  
25 damages or other equitable relief against the owner of a  
26 subdivision, as defined in subdivision (e) of Section 11004.5, or  
27 his or her agent, for a violation of this section. Upon finding a  
28 violation of this section, the court shall award rescission of the  
29 contract, if the purchaser pleads rescission. The court may also  
30 award:

31 (1) All damages actually suffered by a purchaser.

32 (2) Reasonable attorney’s fees and costs to the prevailing  
33 purchaser.

34 (3) Other relief deemed appropriate to carry out the intent of  
35 this section.

36 ~~SEC. 2.~~

37 *SEC. 3.* Section 1689.5 of the Civil Code is amended to read:  
38 1689.5. As used in Sections 1689.6 to 1689.11, inclusive, and  
39 in Section 1689.14:

1 (a) (1) “Home solicitation contract or offer” means any  
2 contract, whether single or multiple, or any offer which is subject  
3 to approval, for the sale, lease, or rental of goods or services or  
4 both, made at other than appropriate trade premises in an amount  
5 of twenty-five dollars (\$25) or more, including any interest or  
6 service charges.

7 (2) “Home solicitation contract” does not include any of the  
8 following:

9 (A) Any contract under which the buyer has the right to rescind  
10 pursuant to Title 1, Chapter 2, Section 125 of the Federal  
11 Consumer Credit Protection Act (P.L. 90-321) and the regulations  
12 promulgated pursuant thereto.

13 ~~(B) Any contract or offer to purchase a timeshare estate or a~~  
14 ~~timeshare use in a timeshare project, as defined in Section 11003.5~~  
15 ~~of the Business and Professions Code, nor any goods or services~~  
16 ~~that are offered as part of, or incidental to, a timeshare estate or a~~  
17 ~~timeshare use in a timeshare project, including, without limitation,~~  
18 ~~an exchange program or incidental benefit, as defined in Section~~  
19 ~~11003.5 of the Business and Professions Code.~~

20 ~~(C)~~

21 *(B) Any contract or offer to purchase a timeshare estate or*  
22 *timeshare use in a timeshare project, as defined in Section 11003.5*  
23 *of the Business and Professions Code, if the timeshare project*  
24 *consists of 12 or more timeshare estates or timeshare uses, is*  
25 *improved with structural dwelling places, and the timeshare*  
26 *estates or timeshare uses have terms of five years or more.*

27 *(C) Any contract or offer to purchase a good or service which*  
28 *is an incidental benefit, as defined in Section 11003.5 of the*  
29 *Business and Professions Code, if the incidental benefit is offered*  
30 *not earlier than concurrently with or within seven calendar days*  
31 *after the offer of a timeshare estate or timeshare use in a timeshare*  
32 *project.*

33 *(D) Any contract or offer to purchase a service which is an*  
34 *exchange program, as defined in Section 11003.5 of the Business*  
35 *and Professions Code, if a person who has made an offer to*  
36 *purchase an exchange program service has a right to rescind any*  
37 *contract resulting from acceptance of the offer until midnight of the*  
38 *seventh calendar day following the offer, and the form of the notice*  
39 *conforms to the requirements set forth in subdivision (b) of Section*  
40 *11024 of the Business and Professions Code.*

(E) Any contract for repair services with a contractor who is duly licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if (1) the contract price is less than one hundred dollars (\$100), (2) the negotiation between the parties was initiated by the prospective buyer, and (3) the contract contains a written and dated statement signed by the prospective buyer stating that the negotiation between the parties was initiated by the prospective buyer.

(b) "Appropriate trade premises," means premises where either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.

(c) (1) "Goods" means tangible chattels bought for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of the real property whether or not severable therefrom.

(2) "Goods" does not include any of the following:

(A) Any vehicle required to be registered under the Vehicle Code.

(B) Any goods sold with this vehicle if sold under a contract governed by Section 2982.

~~(C) A timeshare estate or timeshare use interest in a timeshare project, as defined in Section 11003.5 of the Business and Professions Code, or any goods or services that are offered as part of, or incidental to, a timeshare estate or a timeshare use in a timeshare project, including, without limitation, an exchange program or incidental benefit, as defined in Section 11003.5 of the Business and Professions Code.~~

~~(D)~~

*(C) A timeshare estate or timeshare use in a timeshare project, as defined in Section 11003.5 of the Business and Professions Code, if the timeshare project consists of 12 or more timeshare estates or timeshare uses, is improved with structural dwelling places, and the timeshare estates or timeshare uses have terms of five years or more.*

*(D) Any incidental benefit, as defined in Section 11003.5 of the Business and Professions Code, if the incidental benefit is offered not earlier than concurrently with or within seven calendar days*

1 *after the offer of a timeshare estate or timeshare use in a timeshare*  
2 *project.*

3 (E) Any exchange program, as defined in Section 11003.5 of the  
4 Business and Professions Code, if a person who has made an offer  
5 to purchase an exchange program service has a right to rescind  
6 any contract resulting from acceptance of the offer until midnight  
7 of the seventh calendar day following the offer, and the form of the  
8 notice conforms to the requirements set forth in subdivision (b) of  
9 Section 11024 of the Business and Professions Code.

10 (F) Any mobilehome, as defined in Section 18008 of the  
11 Health and Safety Code.

12 ~~(E)~~

13 (G) Any goods sold with ~~this~~ a mobilehome if either are sold  
14 under a contract subject to Section 18036.5 of the Health and  
15 Safety Code.

16 (d) (1) “Services” means work, labor and services, including,  
17 but not limited to, services furnished in connection with the repair,  
18 restoration, alteration, or improvement of residential premises, or  
19 services furnished in connection with the sale or repair of goods  
20 as defined in Section 1802.1, and courses of instruction, regardless  
21 of the purpose for which they are taken.

22 (2) “Services” does not include any of the following:

23 (A) The services of attorneys, real estate brokers and ~~salesmen~~  
24 ~~salespersons~~, securities dealers or investment counselors,  
25 physicians, optometrists, or dentists.

26 (B) Financial services offered by banks, savings institutions,  
27 credit unions, industrial loan companies, personal property  
28 brokers, consumer finance lenders, or commercial finance lenders,  
29 organized pursuant to state or federal law, that are not connected  
30 with the sale of goods or services, as defined herein.

31 (C) The sale of insurance that is not connected with the sale of  
32 goods or services as defined herein.

33 (D) Services that are offered as part of, or incidental to, a  
34 ~~timeshare estate or a timeshare use in a timeshare project,~~  
35 ~~including, without limitation, an exchange program or incidental~~  
36 ~~benefit, as defined in Section 11003.5 of the Business and~~  
37 ~~Professions Code.~~

38 ~~(E) any timeshare estate or timeshare use in a timeshare project,~~  
39 ~~as defined in Section 11003.5 of the Business and Professions~~  
40 ~~Code, if the timeshare project consists of 12 or more timeshare~~



1 *estates or timeshare uses, is improved with structural dwelling*  
2 *places, and the timeshare estates or timeshares uses have terms of*  
3 *five years or more.*

4 *(E) Services that are offered as part of, or incidental to, an*  
5 *incidental benefit, as defined in Section 11003.5 of the Business*  
6 *and Professions Code, if the incidental benefit is offered not earlier*  
7 *than concurrently with or within seven calendar days after the*  
8 *offer of a timeshare estate or timeshare use in a timeshare project.*

9 *(F) Services that are offered as part of, or incidental to, an*  
10 *exchange program, as defined in Section 11003.5 of the Business*  
11 *and Professions Code, if a person who has made an offer to*  
12 *purchase an exchange program service has a right to rescind any*  
13 *contract resulting from acceptance of the offer until midnight of the*  
14 *seventh calendar day following the offer, and the form of the notice*  
15 *conforms to the requirements set forth in subdivision (b) of Section*  
16 *11024 of the Business and Professions Code.*

17 *(G) Services in connection with the sale or installation of*  
18 *mobilehomes or of goods sold with a mobilehome if either are sold*  
19 *or installed under a contract subject to Section 18036.5 of the*  
20 *Health and Safety Code.*

21 ~~(F)~~

22 *(H) Services for which the tariffs, rates, charges, costs, or*  
23 *expenses, including in each instance the time ~~sale price, is~~ and sale*  
24 *price are required by law to be filed with and approved by the*  
25 *federal government or any official, department, division,*  
26 *commission, or agency of the United States or of the state.*

27 *(e) “Business day” means any calendar day except Sunday, or*  
28 *the following business holidays: New Year’s Day, Washington’s*  
29 *Birthday, Memorial Day, Independence Day, Labor Day,*  
30 *Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas*  
31 *Day.*

32 ~~SEC. 3.~~

33 *SEC. 4. Section 1689.24 of the Civil Code is amended to read:*  
34 *1689.24. As used in Sections 1689.20 to 1689.23, inclusive:*

35 *(a) (1) “Seminar sales solicitation contract or offer” means*  
36 *any contract, whether single or multiple, or any offer which is*  
37 *subject to approval, for the sale, lease, or rental of goods or*  
38 *services or both, made using selling techniques in a seminar setting*  
39 *in an amount of twenty-five dollars (\$25) or more, including any*  
40 *interest or service charges.*



(2) “Seminar sales solicitation contract” does not include any of the following:

(A) Any contract under which the buyer has the right to rescind pursuant to Title 1, Chapter 2, Section 125 of the Federal Consumer Credit Protection Act (P.L. 90-321) and the regulations promulgated pursuant thereto.

~~(B) Any contract or offer to purchase a timeshare estate or a timeshare use in a timeshare project, as defined in Section 11003.5 of the Business and Professions Code, or any goods or services that are offered as part of, or incidental to, a timeshare estate or a timeshare use in a timeshare project, including, without limitation, an exchange program or incidental benefit, as defined in Section 11003.5 of the Business and Professions Code.~~

~~(C)~~

*(B) Any contract or offer to purchase a timeshare estate or timeshare use in a timeshare project, as defined in Section 11003.5 of the Business and Professions Code, if the timeshare project consists of 12 or more timeshare estates or timeshare uses, is improved with structural dwelling places, and the timeshare estates or timeshare uses have terms of five years or more.*

*(C) Any contract or offer to purchase a good or service which is an incidental benefit, as defined in Section 11003.5 of the Business and Professions Code, if the incidental benefit is offered not earlier than concurrently with or within seven calendar days after the offer of a timeshare estate or timeshare use in a timeshare project.*

*(D) Any contract or offer to purchase a service which is an exchange program, as defined in Section 11003.5 of the Business and Professions Code, if a person who has made an offer to purchase an exchange program service has a right to rescind any contract resulting from acceptance of the offer until midnight of the seventh calendar day following the offer, and the form of the notice conforms to the requirements set forth in subdivision (b) of Section 11024 of the Business and Professions Code.*

*(E) Any contract which contains a written and dated statement signed by the prospective buyer stating that the negotiation between the parties was initiated by the prospective buyer.*

(b) “Seminar setting” means premises other than the residence of the buyer.

(c) (1) “Goods” means tangible chattels bought for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods which, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of the real property whether or not severable therefrom.

(2) “Goods” does not include any of the following:

(A) Any vehicle required to be registered under the Vehicle Code.

(B) Any goods sold with a vehicle if sold under a contract governed by Section 2982.

~~(C) A timeshare estate or timeshare use interest in a timeshare project, as defined in Section 11003.5 of the Business and Professions Code, or any goods or services that are offered as part of, or incidental to, a timeshare estate or a timeshare use in a timeshare project, including, without limitation, an exchange program or incidental benefit, as defined in Section 11003.5 of the Business and Professions Code.~~

~~(D)~~

*(C) Any timeshare estate or timeshare use in a timeshare project, as defined in Section 11003.5 of the Business and Professions Code, if the timeshare project consists of 12 or more timeshare estates or timeshare uses, is improved with structural dwelling places, and the timeshare estates or timeshares uses have terms of five years or more.*

*(D) Any incidental benefit, as defined in Section 11003.5 of the Business and Professions Code, if the incidental benefit is offered not earlier than concurrently with or within seven calendar days after the offer of a timeshare estate or timeshare use in a timeshare project.*

*(E) Any exchange program, as defined in Section 11003.5 of the Business and Professions Code, if a person who has made an offer to purchase an exchange program service has a right to rescind any contract resulting from acceptance of the offer until midnight of the seventh calendar day following the offer, and the form of the notice conforms to the requirements set forth in subdivision (b) of Section 11024 of the Business and Professions Code.*

(F) Any mobilehome, as defined in Section 18008 of the Health and Safety Code.

~~(E)~~

(G) Any goods sold with a mobilehome if either are sold under a contract subject to Section 18036.5 of the Health and Safety Code.

(d) (1) “Services” means work, labor and services, including, but not limited to, services furnished in connection with the repair, alteration, or improvement of residential premises, or services furnished in connection with the sale or repair of goods as defined in Section 1802.1, and courses of instruction, regardless of the purpose for which they are taken.

(2) “Services” does not include any of the following:

(A) The services of attorneys, real estate brokers and ~~salesmen~~ *salespersons*, securities dealers or investment counselors, physicians, optometrists, or dentists:

(B) Financial services offered by banks, savings institutions, credit unions, industrial loan companies, personal property brokers, consumer finance lenders, or commercial finance lenders, organized pursuant to state or federal law, which are not connected with the sale of goods or services, as defined herein.

(C) The sale of insurance which is not connected with the sale of goods or services as defined herein.

~~(D) Services that are offered as part of, or incidental to, a timeshare estate or a timeshare use in a timeshare project, including, without limitation, an exchange program or incidental benefit, as defined in Section 11003.5 of the Business and Professions Code.~~

~~(E)~~

*(D) Services that are offered as part of, or incidental to, a timeshare estate or timeshare use in a timeshare project, as defined in Section 11003.5 of the Business and Professions Code, if the timeshare project consists of 12 or more timeshare estates or timeshare uses, is improved with structural dwelling places, and the timeshare estates or timeshare uses have terms of five years or more.*

*(E) Services that are offered as part of, or incidental to, an incidental benefit, as defined in Section 11003.5 of the Business and Professions Code, if the incidental benefit is offered not earlier than concurrently with or within seven calendar days after the offer of a timeshare estate or timeshare use in a timeshare project.*

*(F) Services that are offered as part of, or incidental to, an exchange program, as defined in Section 11003.5 of the Business*

1 *and Professions Code, if a person who has made an offer to*  
2 *purchase an exchange program service has a right to rescind any*  
3 *contract resulting from acceptance of the offer until midnight of the*  
4 *seventh calendar day following the offer, and the form of the notice*  
5 *conforms the requirements set forth in subdivision (b) of Section*  
6 *11024 of the Business and Professions Code.*

7 (G) Services in connection with the sale or installation of  
8 mobilehomes or of goods sold with a mobilehome if either are sold  
9 or installed under a contract subject to Section 18036.5 of the  
10 Health and Safety Code.

11 ~~(F)~~  
12 (H) Services for which the tariffs, rates, charges, costs, or  
13 expenses, including in each instance the time ~~sale price, is~~ *and sale*  
14 *price are* required by law to be filed with and approved by the  
15 federal government or any official, department, division,  
16 commission, or agency of the United States or of the State of  
17 California.

18 (e) “Business day” means any calendar day except Sunday, or  
19 the following business holidays: New Year’s Day, Washington’s  
20 Birthday, Memorial Day, Independence Day, Labor Day,  
21 Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas  
22 Day.

